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ABSTRACT

The Secretary provides notice that the Secretary intends to propose amendments to the regulations implementing Title IX of the Education Amendments of 1972 to provide more flexibility for educators to establish single-sex classes and schools at the elementary and secondary levels. The purpose of the amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination. We want to permit appropriate latitude for innovative efforts to help children learn and to expand the choices parents have for their children's education consistent with the purposes of the Title IX statute and the Constitution. We are issuing a notice of intent to regulate (NOIR) to ensure adequate public input regarding these important and sensitive issues. (Author)

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Federal Register

Wednesday,
May 8, 2002

Part V

Department of Education

34 CFR Part 106

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 106

RIN 1870–AA11

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of intent to regulate.

SUMMARY: The Secretary provides notice that the Secretary intends to propose amendments to the regulations implementing Title IX of the Education Amendments of 1972 to provide more flexibility for educators to establish single-sex classes and schools at the elementary and secondary levels. The purpose of the amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination. We want to permit appropriate latitude for innovative efforts to help children learn and to expand the choices parents have for their children's education consistent with the purposes of the Title IX statute and the Constitution. We are issuing a notice of intent to regulate (NOIR) to ensure adequate public input regarding these important and sensitive issues.

DATES: We must receive your comments on or before July 8, 2002.

ADDRESSES: Address all comments about our intent to regulate to Gerald A. Reynolds, Assistant Secretary for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 5000, Mary E. Switzer Building, Washington, DC 20202–1100. For all comments submitted by letter, you should include the term "Single-sex Notice of Intent Comments."

If you prefer to send your comments through the Internet, use the following address: ocr@ed.gov.

You should include the term "Single-sex Notice of Intent Comments" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Jeanette J. Lim, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 5036, Mary E. Switzer Building, Washington, DC 20202–1100. Telephone: (202) 205–8635 or 1–800–421–3481.

If you use a telecommunications device for the deaf (TDD), you may call 1–877–521–2172. For additional copies of this document, you may call OCR's Customer Service Team at (202) 205–5413 or 1–800–421–3481. The notice of intent will also be available at OCR's site on the Internet at: *www.ed.gov/ocr*.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance. 20 U.S.C. 1681(a). Title IX is implemented through regulations by agencies providing Federal assistance to education programs and activities. 20 U.S.C. 1682. Our current Title IX regulations were issued by our predecessor agency, the Department of Health, Education, and Welfare (HEW), and became effective July 21, 1975.[1] The statute and implementing regulations contain specific provisions regarding single-sex classes, programs, and activities (classes) and single-sex schools. These existing requirements are discussed in detail in a separate document published elsewhere in this issue of the **Federal Register**, entitled "Guidelines on current title IX requirements related to single-sex classes and schools." The No Child Left Behind Act of 2001, which reauthorized the Elementary and Secondary Education Act of 1965, requires the Secretary to issue these guidelines not less than 120 days from the date of enactment.

The legal and educational issues surrounding single-sex classes and schools are complex and sensitive and require consultations with other Federal agencies, including the Department of Justice, as well as input from parents, community leaders, school districts, and interested individuals and organizations. This NOIR is intended to begin the process of public input on these important issues.

The use of single-sex classes and schools can reflect important and legitimate efforts to improve educational outcomes for all students. Rather than being motivated by outdated notions regarding the limitations or limited goals of members of one sex, some of these efforts aim to provide new and better ways to help all students learn and meet high standards. We expect that any proposal to amend or clarify the Title IX regulations would apply only to nonvocational elementary and secondary schools and classes. This is where the need for flexibility to respond to students' diverse educational needs is most prevalent.

Invitation To Comment

Single-sex classes: We want to permit appropriate latitude for schools to implement innovative efforts to help children learn and to expand the choices parents have for their children's education consistent with the Title IX statute and the Constitution.[2] We recognize that to promote excellence and innovation, consistent with the purposes of the No Child Left Behind Act of 2001, it is important that parents have an opportunity to choose an educational program that best fits the needs of their children and that educators have an array of educational options to meet the diverse needs of this nation's students. We are also mindful of congressional concerns—at the time of Title IX's enactment—that some coeducational institutions used sex-based policies and practices that reflected outdated and stereotyped notions of the differences between the sexes and of the limited abilities of girls and women. *See e.g.*, 118 Cong. Rec. 5804–08. In developing a regulatory proposal, we will ensure that educational opportunities are not limited to students based on sex and that single-sex classes are not based on sex-role stereotypes.

We invite comments on whether, and under what circumstances, schools should be permitted to offer single-sex classes under the Title IX regulations. The Secretary specifically invites advice and recommendations from States and local administrators, parents, teachers, community leaders, paraprofessionals,

[1] The HEW regulations were the result of an extensive public comment process and congressional review. HEW received and considered more than 9700 comments before issuing the final regulations. After the final regulations were issued, but before they became effective, Congress held 6 days of hearings to examine whether the regulations were consistent with the statute. *See* Sex Discrimination Regulations: Hearings before the Subcomm. on Postsecondary Education of the House Comm. on Education and Labor, 94th Cong., 1st Sess. (1975) ("Regulations Review Hearings").

[2] The Supreme Court has decided two significant constitutional cases specifically regarding single-sex education. *United States* v. *Virginia*, 518 U.S. 515 (1996) (State-sponsored, male-only military college violated Equal Protection Clause); *Mississippi University for Women* v. *Hogan*, 458 U.S. 718 (1982) (State-sponsored, female-only nursing school violated the Equal Protection Clause.)

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members of local boards of education, charter school operators and public chartering agencies, civil rights groups, and education organizations. We are particularly interested in comments on the criteria that should be used by schools and the Department in determining the sufficiency of educational justifications for single-sex classes and in examples of educational justifications that would meet the proposed criteria. The following are some questions intended to guide your comments:

(1) Should a school district have to explain the benefits of single-sex classes for its students? If so, what kinds of explanations would be adequate? To what extent should these explanations be supported by scientifically based research, assessments of the needs of local students, or other reliable evidence?

(2) Assuming that a school district provides a single-sex class to students of one sex, would it be possible for a coeducational class to provide equal opportunity for students of the other sex? If so, under what circumstances?

(3) If it is not possible for a coeducational class to provide equal opportunity for students of the other sex, and a single sex class would be required, what happens if there is little interest in a single-sex class among students of one sex?

(4) Must student assignments to single-sex classes always be voluntary? If not, when are mandatory assignments permissible?

(5) Are there any classes that should not be permitted to be single-sex? For example, at the time that Title IX was enacted, Congress was particularly concerned about discrimination in single-sex vocational education classes and sex-segregated physical education classes (although students could be separated by sex in physical education classes involving contact sports.)

Single-sex schools: Because of the statutory exemption for single-sex admissions policies of single-sex elementary and secondary schools, which is reflected in the Title IX regulations, a school district does not need to provide the Department with a justification for offering a single-sex school. There is already flexibility in the regulations for allowing school districts to offer single-sex nonvocational schools as long as certain conditions are met. (See the "Guidelines on current title IX requirements related to single-sex classes and schools" for a more complete discussion regarding the need for certain regulations in this area.) However, we are interested in receiving comments on the following issues:

(1) If a school district provides a single-sex school to students of one sex, would it be possible for a coeducational school to provide equal opportunity for students of the other sex? If so, under what circumstances?

(2) Are there special considerations with regard to single-sex charter schools or magnet schools? Should a school district, State, or chartering agency be required to offer a school for students of the other sex? If so, under what circumstances?

(3) Given the Supreme Court's decision in *United States* v. *Virginia*, 518 U.S. 515 (1996), should a school district that establishes single-sex schools or classes for one sex be required to establish schools or classes for the other sex that are "comparable" or that meet some other standard?

(**Note**: With this question, we seek input regarding classes as well as schools.)

During and after the comment period, you may inspect all public comments received in response to this notice in room 5036, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this NOIR. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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After we review comments on this notice, we will publish a proposed amendment to the Title IX regulations for public comment.

Authority: 20 U.S.C. 1681, 1682.

Dated: May 3, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02–11476 Filed 5–7–02; 8:45 am]

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